corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied. The State and the corporation, in such cases, are equally bound. The power given becomes a trust which the donor cannot annul, and which the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of the contract in this way than in any other.*

The laws requiring taxes to the requisite amount to be collected, in force when the bonds were issued, are still in force for all the purposes of this case. The act of 1863 is, so far as it affects these bonds, a nullity. It is the duty of the city to impose and collect the taxes in all respects as if that act had not been passed. A different result would leave nothing of the contract, but an abstract right—of no practical value—and render the protection of the Constitution a shadow and a delusion.

The Circuit Court erred in overruling the application for a *mandamus*. The judgment of that court is REVERSED, and the cause will be remanded, with instructions to proceed

IN CONFORMITY WITH THIS OPINION.

THE HINE v. TREVOR.

1. The doctrine of the case of *The Genesee Chief*, 12 Howard, that the admiralty jurisdiction of the Federal courts, as granted by the Constitution, as not limited to tide-water, but extends wherever vessels float and navigation successfully aids commerce, approved and affirmed.
2. The grant of admiralty powers to the District Courts of the United States, by the ninth section of the act of September 24th, 1789, is coextensive with this grant in the Constitution, as to the character of the waters over which it extends.

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* People *v.* Bell, 10 California, 570; Dominic *v.* Sayre, 3 Sandford, 555.

Statement of the case.

3. The act of February 26th, 1845, is a limitation of the powers granted by the act of 1789, as regards cases arising *upon the lakes and navigable waters connecting said lakes*, in the following particulars:
   1. It limits the jurisdiction to vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and which are employed in commerce and navigation, between ports and places in different States.
   2. It grants a jury trial, if either party shall demand it.
   3. The jurisdiction is not exclusive, but is expressly made concurrent with such remedies as may be given by State laws.
4. The grant of original admiralty jurisdiction by the act of 1789, including as it does all cases not covered by the act of 1845, is exclusive, not only of all other Federal courts, but of all State courts.
5. Therefore, State statutes, which attempt to confer upon State courts a remedy for marine torts and marine contracts, by proceedings strictly *in rem*, are void; because they are in conflict with that act of Congress, except as to cases arising on the lakes and their connecting waters.
6. These statutes do not come within the saving clause of the ninth section of the act of 1789, concerning a common-law remedy.
7. But this rule does not prevent the seizure and sale, by the State courts, of the interest of any owner, or part owner, in a vessel, by attachment or by general execution, when the proceeding is a personal action against such owner, to recover a debt for which he is personally liable.
8. Nor does it prevent any action which the common law gives for obtaining a judgment *in personam* against a party liable in a marine contract, or a marine tort.

ERROR to the Supreme Court of the State of Iowa; the case, as disclosed by the record, having been in substance this:

A collision occurred between the steamboats Hine and Sunshine, on the *Mississippi River*, at or near St. Louis, in which the latter vessel was injured. Some months afterwards, the owners of the Sunshine caused the Hine to be seized while she was lying at Davenport, Iowa, in a *proceeding under the laws of that State*, to subject her to sale in satisfaction of the damages sustained by their vessel. The code of Iowa, under which this seizure was made, gives a lien against any boat found in the waters of that State, for injury to person or property by said boat, officers or crew, &c.; gives precedence in liens; authorizes the seizure and sale of the boat, without any process against the wrongdoer, whether owner or master, and saves the plaintiff all his

common-law rights, but makes no provision to protect the owner of the vessel.

The owners of the Hine interposed a plea *to the jurisdiction of the State court.* The point being ruled against them, it was carried to the Supreme Court of the State, where the judgment of the lower court was affirmed; and by the present writ of error this court was called upon to reverse that decision.

To comprehend the argument fully, it is here well to state that Congress had, prior to the date of this proceeding, enacted—

1. In 1789, September 24th, by the Judiciary Act, that the District Courts of the United States "shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under the laws of impost, navigation, or trade of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burden. . . . *Saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it.*"

2. In 1845, by statute of the 26th February of that year, "that the District Courts of the United States shall have, possess, and exercise the same jurisdiction in matters of contract and tort, arising in, upon, or concerning steamboats and other vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and at the same time employed in business of commerce and navigation, between ports and places in different states and territories, upon the *lakes* and *navigable waters connecting said lakes*, as is now possessed and exercised by the said courts in cases of the like steamboats and other vessels, employed in navigation and commerce upon the high seas, or tide-waters within the admiralty and maritime jurisdiction of the United States."

The question in the present case was, how far the jurisdiction of the District Courts of the United States, in cases of admiralty arising on our navigable inland waters, is exclusive; and how far the State courts might exercise jurisdiction concurrently.

Argument in favor of State jurisdiction.

Mr. Cook, in favor of the concurrent State jurisdiction:

I. The Judiciary Act of 1789 invests the Federal District Courts with exclusive cognizance of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy, when the common law is competent to give it. This act was amended in 1845, and extended the admiralty jurisdiction of the Federal courts to cases on the lakes and navigable waters connecting the same, but expressly saving to parties the right of a concurrent remedy which may be given by State laws.

In England the jurisdiction of courts of admiralty was confined to the ebb and flow of the tide; and this court, in the cases of *The Thomas Jefferson*,* and *The Steamboat Orleans* v. *Phœbus*,† followed the English decisions, confining the admiralty jurisdiction. But in 1851, in the case of *The Genesee Chief*,‡ it overruled these two cases, and held that the jurisdiction of courts of admiralty extended to the lakes and navigable waters of the United States. But neither in this case nor in any other case decided by this court, that we recall, was it decided that the jurisdiction of the District Courts of the United States in cases of admiralty is exclusive. The judiciary acts of Congress to which we have referred expressly save to suitors, as we have remarked, common-law remedies, and any concurrent remedies provided by State laws.

In the absence, then, of any decision by this court we may look at the action of the State courts. And in a mass of decisions, which may be referred to, we do not find one in which the jurisdiction of the State courts was denied on the ground assumed by plaintiff in this case; but, on the contrary, such jurisdiction of the State courts in this class of cases is admitted all the way through.

In Iowa, from which State the present case comes, there is the case of *Miller* v. *Galland*.§ That case was an attachment against the steamboat Kentucky. A question of jurisdiction, on another point, was raised, and it was held that

* 10 Wheaton, 428.
† 11 Peters, 175.
‡ 12 Howard, 443.
§ 4 Green, 191.

the court had jurisdiction. Numerous cases in Iowa, cited below,* are to the same effect.

We refer to these cases, not because they explicitly and directly decide anything on the question of jurisdiction, but only to show that if the point made by taking this writ is well taken, the Supreme Court of Iowa has been deciding a great many cases over which it had no jurisdiction.

Authorities, however, in other States support its view.

The case of *Germain* v. *The Indiana*, is in Illinois.† There the court speaks of the difference between the decrees in State courts and in admiralty courts in this class of cases, and clearly upholds the jurisdiction of State courts. Many other cases have been decided in the same State, both before and since the decision in the case last referred to, in which the jurisdiction is recognized and impliedly admitted.

So in New York. *The Richmond Turnpike Co.* v. *Vanderbilt*,‡ in the Superior Court of New York City, was a collision in tide-water. The jurisdiction was maintained. The earlier case of *Percival* v. *Hickey*,§ was to the same effect; and the case is an important and well-considered one. The whole question of jurisdiction of State and admiralty courts was there considered, and the jurisdiction of the State courts upheld.

If we may cite text-writers, we have the respectable authority of Mr. Angell,‖ who, after referring to authorities, says: "We have seen that the remedy in cases of collision lies either in the courts of common law or in the admiralty court."

So in Missouri.¶ So in Ohio.**

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* The Kentucky *v.* Brooks, 1 Green, 398; Newcomb *v.* The Clermont, 3 Id. 295; Ham *v.* The Hamburg, 2 Iowa, 460; Steamboat Kentucky v. Hine, 1 Green, 379; Haight & Brother *v.* The Henrietta, 4 Iowa, 472; The War Eagle, 9 Iowa, 374, S. C. 14 Id. 363.

† 11 Illinois, 535.

‡ 1 Hill, 480; and see Barnes *v.* Cole, 21 Wendell, 188.

§ 18 Johnson, 257.

‖ Angell on the Law of Carriers, § 651.

¶ Steamboat United States *v.* Mayor, &c., of St. Louis, 5 Missouri, 230; Steamboat Western Belle *v.* Wagner, 11 Id. 30.

** Steamboat Clipper *v.* Logan, 18 Ohio, 375; Thompson *v.* The J. D. Morton, 2 Ohio State, 26.

Argument in favor of State jurisdiction.

Above any authorities already cited is the case of *Taylor* v. *Carryl*,* in this court. It was three times argued, and the whole question of jurisdiction of State and Federal courts discussed and determined. A vessel had been seized under process of attachment issued from a State court of Pennsylvania, identical with that which issues out of the District Court of the United States sitting in admiralty. A libel was filed in the District Court of the United States for mariners' wages. It was held that where property is levied upon it is not liable to be taken by an officer acting under another jurisdiction. The admiralty jurisdiction of the Federal court, although exclusive in some subjects, is concurrent upon others. The courts of common law deal with ships or vessels as with other personal property. In cases like the one now before the court, courts of common law, we think, have concurrent jurisdiction.

II. Up to the time of *The Genesee Chief*, it was held by this court that courts of admiralty had jurisdiction only within the ebb and flow of the tide. Then, it follows that up to that time, State courts must have had exclusive jurisdiction over this class of cases, or there was no remedy in the law. Now, if they once had jurisdiction, there must be some law, or provision of the Constitution, which took it from them. We find none. But we do find the decision in that case asserting that the courts of admiralty have jurisdiction above such ebb and flow. But this does not oust State courts from their jurisdiction.

III. The Federal courts are of limited jurisdiction. They can only exercise the jurisdiction given by act of Congress. Now when parties go into the Federal courts, they must show by the pleadings certain facts to give the court jurisdiction; such as residence, citizenship of the different parties, or such other fact as may be prescribed by law, to affirmatively show jurisdiction in the court.

Now apply the rule to the pleadings in this case. By the act of 1845—under which alone the plaintiff in error can set

* 20 Howard, 583.

up that the courts of the United States have jurisdiction—these courts have jurisdiction only in matters of contract and tort in, upon, and concerning steamboats of twenty tons burden, enrolled and licensed in the coasting trade, &c. In this case there is no averment that the steamboat was of twenty tons burden; no averment that she was enrolled and licensed for the coasting trade; and no averment that she was engaged in business of commerce and navigation upon the lakes and navigable waters, &c.; no averments, therefore, which affirmatively show jurisdiction in the District Court of the United States at all.

Mr. Grant, contra.

Mr. Justice MILLER delivered the opinion of the court.

The record distinctly raises the question, how far the jurisdiction of the District Courts of the United States in admiralty causes, arising on the navigable inland waters of this country, is exclusive, and to what extent the State courts can exercise a concurrent jurisdiction?

Nearly all the States—perhaps all whose territories are penetrated or bounded by rivers capable of floating a steamboat—have statutes authorizing their courts, by proceedings *in rem*, to enforce contracts or redress torts, which, if they had the same relation to the sea that they have to the waters of those rivers, would be conceded to be the subjects of admiralty jurisdiction. These statutes have been acted upon for many years, and are the sources of powers exercised largely by the State courts at the present time. The question of their conflict with the constitutional legislation of Congress, on the same subject, is now for the first time presented to this court.

We are sensible of the extent of the interests to be affected by our decision, and the importance of the principles upon which that decision must rest, and have held the case under advisement for some time, in order that every consideration which could properly influence the result might be deliberately weighed.

There can, however, be no doubt about the judgment which we must render, unless we are prepared to overrule the entire series of decisions of this court upon the subject of admiralty jurisdiction on Western waters, commencing with the case of *The Genesee Chief*, in 1851, and terminating with that of *The Moses Taylor*, decided at the present term;* for these decisions supply every element necessary to a sound judgment in the case before us.

The history of the adjudications of this court on this subject, which it becomes necessary here to review, is a very interesting one, and shows with what slowness and hesitation the court arrived at the conviction of the full powers which the Constitution and acts of Congress have vested in the Federal judiciary. Yet as each position has been reached, it has been followed by a ready acquiescence on the part of the profession and of the public interested in the navigation of the interior waters of the country, which is strong evidence that the decisions rested on sound principles, and that the jurisdiction exercised was both beneficial and acceptable to the classes affected by it.

From the organization of the government until the era of steamboat navigation, it is not strange that no question of this kind came before this court. The commerce carried on upon the inland waters prior to that time was so small, that cases were not likely to arise requiring the aid of admiralty courts. But with the vast increase of inland navigation consequent upon the use of steamboats, and the development of wealth on the borders of the rivers, which thus became the great water highways of an immense commerce, the necessity for an admiralty court, and the value of admiralty principles in settling controversies growing out of this system of transportation, began to be felt.

Accordingly we find in the case of *The Steamboat Thomas Jefferson*, reported in 10 Wheaton, 428, that an attempt was made to invoke the jurisdiction in the case of a steamboat making a voyage from Shippingport, in Kentucky, to a point

* *Supra*, p. 411.

some distance up the Missouri River, and back again. This court seems not to have been impressed with the importance of the principle it was called upon to decide, as, indeed, no one could then anticipate the immense interests to arise in future, which by the rulings in that case were turned away from the forum of the Federal courts. Apparently without much consideration—certainly without anything like the cogent argument and ample illustration which the subject has since received here—the court declared that no act of Congress had conferred admiralty jurisdiction in cases arising above the ebb and flow of the tide.

In the case of *The Steamboat Orleans*, in 11 Peters, 175, the court again ruled that the District Court had no jurisdiction in admiralty, because the vessel, which was the subject of the libel, was engaged in interior navigation and trade, and not on tide-waters. The opinion on this subject, as in the case of *The Thomas Jefferson*, consisted of a mere announcement of the rule, without any argument or reference to authority to support it.

The case of *Waring* v. *Clark*, 8 Howard, 441, grew out of a collision within the ebb and flow of the tide on the Mississippi River, but also *infra corpus comitatus*. The jurisdiction was maintained on the one side and denied on the other with much confidence. The court gave it a very extended consideration, and three of the judges dissented from the opinion of the court, which held that there was jurisdiction. The question of jurisdiction above tide-water was not raised, but the absence of such jurisdiction seems to be implied by the arguments of the court as well as of the dissenting judges.

The next case in order of time, *The Genesee Chief*, 12 Howard, 457, is by far the most important of the series, for it overrules all the previous decisions limiting the admiralty jurisdiction to tide-water, and asserts the broad doctrine that the principles of that jurisdiction, as conferred on the Federal courts by the Constitution, extend wherever ships float and navigation successfully aids commerce, whether internal or external.

That case arose under an act of Congress, approved February 26th, 1845,* which provides that "the District Courts of the United States shall have, possess, and exercise the same jurisdiction in matters of contract and tort arising in, upon, or concerning steamboats, or other vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and at the time employed in navigation between ports and places, in different states and territories, upon the lakes and navigable waters connecting said lakes, as is now possessed and exercised by the said courts in cases of like steamboats and other vessels employed in navigation and commerce upon the high seas and tide-waters within the admiralty and maritime jurisdiction of the United States." The Genesee Chief was libelled under this act for damages arising from a collision on Lake Ontario. A decree having been rendered against the vessel, the claimants appealed to this court.

It was urged here that the act under which the proceeding was had was unconstitutional.

1st. Because the act was not a regulation of commerce, and was not therefore within the commercial clause of the Constitution.

2d. Because the constitutional grant of admiralty powers did not extend to cases originating above tide-water, and Congress could not extend it by legislation.

The court concurred in the first of these propositions, that the act could not be supported as a regulation of commerce. The Chief Justice, who delivered the opinion, then entered into a masterly analysis of the argument by which it was maintained that the admiralty power conferred by the Federal Constitution did not extend beyond tide-water in our rivers and lakes.

This argument assumed that in determining the limits of those powers, we were bound by the rule which governed the Admiralty Court of Great Britain on the same subject at the time our Constitution was adopted. And it was said

* 5 Statutes at Large, 726.

that the limit of the court's power in that country was the ebb and flow of the tide.

This was conceded to be true as a matter of fact, but the Chief Justice demonstrated that the reason of this rule was that the limit of the tide in all the waters of England was at the same time the limit of practicable navigation, and that as there could be no use for an admiralty jurisdiction where there could be no navigation, this *test* of the navigability of those waters became substituted as the rule, instead of the navigability itself. Such a rule he showed could have no pertinency to the rivers and lakes of this country, for here no such test existed. Many of our rivers could be navigated as successfully and as profitably for a thousand miles above tide-water as they could below; and he showed the absurdity of adopting as the test of admiralty jurisdiction in this country an artificial rule, which was founded on a reason in England that did not exist here. The true rule in both countries was the navigable capacity of the stream; and as this was ascertained in England by a test which was wholly inapplicable here, we could not be governed by it. The cases of *The Thomas Jefferson* and *The Steamboat Orleans*, already referred to, were then examined and overruled.

This opinion received the assent of all the members of the court except one.

Although the case arose under the act of 1845, already cited, which in its terms is expressly limited to matters arising upon the lakes and the navigable waters connecting said lakes, and which the Chief Justice said was a limitation of the powers conferred previously on the Federal courts, it established principles under which the District Courts of the United States began to exercise admiralty jurisdiction of matters arising upon all the public navigable rivers of the interior of the country.

This court also, at the same term in which the case of *The Genesee Chief* was decided, held in *Fretz* v. *Bull*, in which the point was raised in argument, that the Federal courts had jurisdiction according to the principles of that case in the matter of a collision on the Mississippi River above tide-water.

As soon as these decisions became generally known admiralty cases increased rapidly in the District Courts of the United States, both on the lakes and rivers of the West. Many members of the legal profession engaged in these cases, and some of the courts have from this circumstance assumed, without examination, that the jurisdiction in admiralty cases arising on the rivers of the interior of the country is founded on the act of 1845; and such is perhaps the more general impression in the West. The very learned court whose judgment we are reviewing has fallen into this mistake in the opinion which it delivered in the case before us, and it is repeated here by counsel for the defendant in error.

But the slightest examination of the language of that act will show that this cannot be so, as it is confined, as we have already said, to cases arising "on the lakes and navigable waters connecting said lakes." The jurisdiction upon those waters is governed by that statute, but its force extends no further.

The jurisdiction thus conferred is in many respects peculiar, and its exercise is in some important particulars different under that act from the admiralty jurisdiction conferred by the act of September 24th, 1789.

1. It is limited to vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade.

2. To vessels employed in commerce and navigation between ports and places in different States.

3. It grants a jury trial if either party shall demand it.

4. The jurisdiction is not exclusive, but is expressly made concurrent, with such remedies as may be given by State laws.

But the true reason why the admiralty powers of the Federal courts began now to be exercised for the first time in the inland waters was this: the decision in the case of *The Genesee Chief*, having removed the imaginary line of tide-water which had been supposed to circumscribe the jurisdiction of the admiralty courts, there existed no longer any reason why the general admiralty powers conferred on

all the District Courts by the ninth section of the Judiciary Act,* should not be exercised wherever there was navigation which could give rise to admiralty and maritime causes. The Congress which framed that act—the first assembled under the Constitution—seemed to recognize this more extended view of the jurisdiction in admiralty, by placing under its control cases of seizure of vessels under the laws of impost, navigation, and trade of the United States, when those seizures were made in waters navigable from the sea by vessels of ten tons burden or upwards.

The case of *The Magnolia*, 20 Howard, 296, is another important case in the line of decisions which we have been considering. It was a case of collision occurring on the Alabama River, far above the ebb and flow of the tide, on a stream whose course was wholly within the limits of the State which bears its name. This was thought to present an occasion when the doctrines announced in the case of *The Genesee Chief* might properly be reconsidered, and modified, if not overruled. Accordingly we find that the argument in favor of the main proposition decided in that case was restated with much force in the opinion of the court, and that a very elaborate opinion was delivered on behalf of three dissenting judges. The principles established by the case of *The Genesee Chief* were thus reaffirmed, after a careful and full reconsideration. It was also further decided (which is pertinent to the case before us), that the jurisdiction in admiralty on the great Western rivers did *not* depend upon the act of February 3d, 1845, but that it was founded on the act of September 24th, 1789. That decision was made ten years ago, and the jurisdiction, thus firmly established, has been largely administered by all the District Courts of the United States ever since, without question.

At the same time, the State courts have been in the habit of adjudicating causes, which, in the nature of their subject-matter, are identical in every sense with causes which are acknowledged to be of admiralty and maritime cognizance;

* 1 Statutes at Large, 77.

and they have in these causes administered remedies which differ in no essential respect from the remedies which have heretofore been considered as peculiar to admiralty courts. This authority has been exercised under State statutes, and not under any claim of a general common-law power in these courts to such a jurisdiction.

It is a little singular that, at this term of the court, we should, for the first time, have the question of the right of the State courts to exercise this jurisdiction, raised by two writs of error to State courts, remote from each other, the one relating to a contract to be performed on the Pacific Ocean, and the other to a collision on the Mississippi River. The first of these cases, *The Moses Taylor*, had been decided before the present case was submitted to our consideration.

The main point ruled in that case is, that the jurisdiction conferred by the act of 1789, on the District Courts, in civil causes of admiralty and maritime jurisdiction, is exclusive by its express terms, and that this exclusion extends to the State courts. The language of the ninth section of the act admits of no other interpretation. It says, after describing the criminal jurisdiction conferred on the District Courts, that they "shall also have *exclusive* original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, when the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burden." If the Congress of the United States has the right, in providing for the exercise of the admiralty powers, to which the Constitution declares the authority of the Federal judiciary shall extend, to make that jurisdiction exclusive, then, undoubtedly, it has done so by this act. This branch of the subject has been so fully discussed in the opinion of the court, in the case just referred to, that it is unnecessary to consider it further in this place.

It must be taken, therefore, as the settled law of this court, that wherever the District Courts of the United States have original cognizance of admiralty causes, by virtue of the act of 1789, that cognizance is exclusive, and no other

court, state or national, can exercise it, with the exception always of such concurrent remedy as is given by the common law.

This examination of the case, already decided by this court, establishes clearly the following propositions:

1. The admiralty jurisdiction, to which the power of the Federal judiciary is by the Constitution declared to extend, is not limited to tide-water, but covers the entire navigable waters of the United States.

2. The original jurisdiction in admiralty exercised by the District Courts, by virtue of the act of 1789, is exclusive, not only of other Federal courts, but of the State courts also.

3. The jurisdiction of admiralty causes arising on the interior waters of the United States, other than the lakes and their connecting waters, is conferred by the act of September 24th, 1789.

4. The admiralty jurisdiction exercised by the same courts, on the lakes and the waters connecting those lakes, is governed by the act of February 3d, 1845.

If the facts of the case before us in this record constitute a cause of admiralty cognizance, then the remedy, by a direct proceeding against the vessel, belonged to the Federal courts alone, and was excluded from the State tribunals.

It was a case of collision between two steamboats. The case of *The Magnolia*,* to which we have before referred, was a case of this character; and many others have been decided in this court since that time. That they were admiralty causes has never been doubted.

We thus see that every principle which is necessary to a decision of this case has been already established by this court in previous cases. They lead unavoidably to the conclusion, that the State courts of Iowa acted without jurisdiction; that the law of that State attempting to confer this jurisdiction is void, because it is in conflict with the act of Congress of September 24th, 1789, and that this act is well authorized by the Constitution of the United States. Unless

* 20 Howard, 296.

we are prepared to retract the principles established by the entire series of decisions of this court on that subject, from and including the case of *The Genesee Chief*, down to that of *The Moses Taylor*, decided at this term, we cannot escape this conclusion. The succeeding cases are in reality but the necessary complement and result of the principles decided in the case of *The Genesee Chief*. The propositions laid down there, and which were indispensable to sustain the judgment in that case, bring us logically to the judgment which we must render in this case. With the doctrines of that case on the subject of the extent of the admiralty jurisdiction we are satisfied, and should be disposed to affirm them now if they were open to controversy.

It may be well here to advert to one or two considerations to which our attention has been called, but which did not admit of notice in the course of observation which we have been pursuing without breaking the sequence of the argument.

1. It is said there is nothing in the record to show that the Hine was of ten tons burden or upwards, and that, therefore, the case is not brought within the jurisdiction of the Federal courts. The observation is made, in the opinion of the Supreme Court of Iowa, in reference to the provision of the act of 1845, which that court supposed to confer jurisdiction on the Federal courts in the present case, if it had such jurisdiction at all. We have already shown that the jurisdiction is founded on the act of 1789. That act also speaks of vessels of ten tons burden and upwards, but not in the same connection that the act of 1845 does. In the latter act it is made essential to the jurisdiction that the vessel which is the subject of the contract, or the tort, should be enrolled and licensed for the coasting trade, and should be of twenty tons burden, or upwards. In the act of 1789, it is declared that the District Courts shall have jurisdiction in admiralty of seizures for violations of certain laws, where such seizures are made on rivers navigable by vessels of ten tons burden or upwards from the sea. In the latter case, the phrase is used as describing the carrying capacity of the

river where the seizure is made. In the former case, it relates to the capacity of the vessel itself.

2. It is said that the statute of Iowa may be fairly construed as coming within the clause of the ninth section of the act of 1789, which "saves to suitors, in all cases, the right of a common-law remedy where the common law is competent to give it."

But the remedy pursued in the Iowa courts, in the case before us, is in no sense a common-law remedy. It is a remedy partaking of all the essential features of an admiralty proceeding *in rem*. The statute provides that the vessel may be sued and made defendant without any proceeding against the owners, or even mentioning their names. That a writ may be issued and the vessel seized, on filing a petition similar in substance to a libel. That after a notice in the nature of a monition, the vessel may be condemned and an order made for her sale, if the liability is established for which she was sued. Such is the general character of the steamboat laws of the Western States.

While the proceeding differs thus from a common-law remedy, it is also essentially different from what are in the West called suits by attachment, and in some of the older States foreign attachments. In these cases there is a suit against a personal defendant by name, and because of inability to serve process on him on account of non-residence, or for some other reason mentioned in the various statutes allowing attachments to issue, the suit is commenced by a writ directing the proper officer to attach sufficient property of the defendant to answer any judgment which may be rendered against him. This proceeding may be had against an owner or part owner of a vessel, and his interest thus subjected to sale in a common-law court of the State.

Such actions may, also, be maintained *in personam* against a defendant in the common-law courts, as the common law gives; all in consistence with the grant of admiralty powers in the ninth section of the Judiciary Act.

But it could not have been the intention of Congress, by the exception in that section, to give the suitor all such

remedies as might afterwards be enacted by State statutes, for this would have enabled the States to make the jurisdiction of their courts concurrent in all cases, by simply providing a statutory remedy for all cases. Thus the exclusive jurisdiction of the Federal courts would be defeated. In the act of 1845, where Congress does mean this, the language expresses it clearly; for after saving to the parties, in cases arising under that act, a right of trial by jury, and the right to a concurrent remedy at common law, where it is competent to give it, there is added, "any concurrent remedy which may be given by the State laws where such steamer or other vessel is employed."

THE JUDGMENT IS REVERSED, and the case is remanded to the Supreme Court of Iowa, with directions that it be

DISMISSED FOR WANT OF JURISDICTION.

NEWELL v. NIXON.

1. Although no partnership may exist between them, yet where two persons are joint owners of a vessel against which a claim exists for non-delivery of cargo, and one gives a note in the joint name for a balance agreed on as due for such non-delivery—the other party being aware of the making of the note, and of the consideration for which it was given, and making no dissent from the act of his co-owner—such note cannot be repudiated by such other party, he having bought out the share of his co-owner in the vessel and agreed to pay her debts and liabilities.
2. Where a suit is brought against a shipowner for a sum acknowledged by the owners to be due the shipper, for a breach of contract in delivering merchandise, the production of the bill of lading is not essential.
3. The plea of prescription of one year, under the Civil Code of Louisiana, cannot be set up in a case where the suit is brought in April on an acknowledgment made in September previous of a sum due on settlement.
4. A party suing, not on a note but on the consideration for which the note was given—and using the note as evidence rather than as the foundation of the claim—may have lawful interest on the sum due him, although by note given on a settlement the party sued may have promised to pay unlawful interest and such as the law of the State where the note was given visits with a forfeiture of all interest whatever.